IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.769 OF 2004

Harischandra @ Lallu Ramkishore Sharma ...Petitioner

vs.

A.N.Roy and others ...Respondents

Shri U.N.Tripathi for the Petitioner
Ms Aruna Pai,A.P.P.

CORAM: SMT.RANJANA DESAI &

A.S.OKA,JJ.

DATE : SEPTEMBER 8, 2004.

ORAL JUDGMENT: **(Per Smt.Ranjana Desai,J.)**

1. In this petition the petitioner (the detenu for convenience) has challenged the order dated 5th March 2004 passed by the Commissioner of Police, Solapur under section 3 (1) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (said Act for short). The order of detention was served on the detenu on 27-2-2004 along with grounds of detention and the material in support thereof. The detention order is based on criminal case vide C.R.No.300/2003 registered under section 302 of I.P.C. at Ghatkopar Police Station and two in-camera statements recorded on 10-1-2004. On the basis of said case and two in-camera statements, the

detaining authority was subjectively satisfied that the detenu was a weapon wielding desperado and has become

perpetual and potential danger to the society at large and he has created a reign of terror in the localities and areas in question within the jurisdiction of Ghatkopar Police Station. The detaining authority has observed in the grounds of detention that on account of detenu's activities, the people in the said locality and areas are experiencing a sense of insecurity and living and carrying out their daily routine under a constant shadow of fear.

2. We have heard the learned A.P.P. and Shri Tripathi the learned Counsel for the petitioner/detenu at some length. Shri Tripathi has assailed the impugned order on three counts. He contended that the order of detention was passed while the detenu was in custody. The learned Counsel contended that the detenu is involved in serious offence of murder. Till the date of detention order he had not filed any application for bail.Therefore, there was no possibility of his being released on bail and indulging in activities prejudicial to the maintenance of public order. The learned Counsel submitted the apprehension expressed by the detaining authority in the grounds of detention and also in the affidavit in reply that the detenu was likely to be released on bail is baseless. In support of his submission the learned Counsel placed reliance on the judgment of the Supreme Court Dharmendra Chelawat v. Union of India AIR 90 SC 1196.

3. We are not impressed by this submission of the learned

Counsel. It is true that the detenu is involved in a murder case. It is also true that he had not filed any application for bail. In the grounds of detention the detaining authority has shown awareness of the subsequent custody of the detenu. We may reproduce the relevant paragraph of the grounds :

> . On 24-9-2003, you were produced for remand before the Ld.M.M.31st Court, Vikhroli, Mumbai when you were remanded to police custody till 8-10-2003. On 8-10-2003, you were again produced for remand before the said court, when you were remanded to judicial custody till 21-10-2003. Thereafter you judicial custody period has been extended from time to time without bail order. You are still in judicial custody, as bail has not been granted to you in this offence. After completion of investigation a charge sheet has been filed in the said court vide C.C.No.1009/P/03 on 12-12-2003 against you. At present you are in judicial custody without bail order.

4. The detaining authority has further reiterated that he was aware that the detenu was in judicial custody and the bail has not been granted in C.R.No.300/2003. The detaining authority has further expressed that the detenu may be granted bail in normal law of the land and in view of tendencies and inclination reflected in the offences committed by him, he was satisfied that after availing bail facility and in the event of his remaining at large, he was likely to revert to the similar activities prejudicial to the maintenance of public order and therefore it was necessary to

detain him under the said Act with a view to preventing him from acting in any such prejudicial manner in future.

5. Apart from this in the affidavit in reply the detaining authority has again reiterated that the detenu was in judicial custody and has not been granted bail in C.R.No.300/2003. It is further averred that though the C.R. was registered for the offence of murder prima facie it was due to a quarrel that the said incident had taken place. Hence, considering this background, if the detenu were to prefer an application for bail, there was every possibility that the detenu would have been granted bail under the normal law of the land. The detaining authority has concluded that hence there were cogent and compelling reasons on the basis of which the detenu would be granted bail under the normal law of the land.

6. In our opinion, perusal of the affidavit shows that not only that the detaining authority was aware of the fact that the detenu was in custody and that he had not applied for bail, but he had also applied mind to the nature of the murder case in which the detenu was involved and he was of the opinion that since the incident had taken place out of a quarrel, there was every possibility that the detenu would be granted bail under the normal law of the land. In our opinion the detenu can hardly contend that the detaining authority had not applied his mind to the possibility of the

detenu being released on bail in near future and the likelihood of his reverting to prejudicial activities. This certainly is not a case where there is non-application of mind on the part of the detaining authority.

7. In Dharmendra Suganchand Chelawat's case (supra) while dealing with the question of subsisting custody the Supreme Court has observed as under :

> . "An order of detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu was already in detention; and ii) there were compelling reasons justifying such detention despite the fact that the detenu was already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

8. In this case the detaining authority has considered the material in support of the murder case. The material disclosed that the murder was the outcome of a quarrel. This was the cogent material on the basis of which the detaining

authority was satisfied that the detenu was likely to be released on bail. The incamera statements provided the material on the basis of which the detaining authority was satisfied that the detenu would revert to similar prejudicial activities in future. We are therefore of the opinion that in the present case the conditions laid down by the Supreme Court in Dharmendra Chelawat's case (supra) are present. The detention order cannot be faulted on that count.

9. In this connection, we may also refer to another judgment of the Supreme Court to which our attention has been drawn by the learned A.P.P., in Veeramani vs. State of Tamil Nadu. 1995 CRI.L.J. 2644. The facts of that case were similar to the facts of the present case. The detenu was involved in a murder case. He had not preferred bail application. The question was whether the detaining authority could have issue the order of detention. While dealing with this question the Supreme Court has observed as under :

> . "But in the instant case what we have to mainly see is whether there was awareness in the mind of the detaining authority that the detenu is in custody and he had reason to believe that he is likely to be released. The grounds do disclose that the detaining authority was aware that the detenu in custody and it is further mentioned that he was also aware that bail is usually granted by the Courts in such cases and it is further emphasised that there is 'imminent possibility' of the detenu coming out on bail..."

The Supreme Court rejected the submission that the detaining

authority had not applied its mind to the vital aspect of subsisting custody of the detenu. The present case would be covered by the judgment in Veermani's case.

10. Mr.Tripathi then contended that the grounds of detention do not indicate that on account of the activities of the detenu public order was affected. He submitted that the incidents relied upon by the detaining authority only pertain to law and order and not to public order. The learned Counsel contended that the detenu was arrested for committing offence under section 302 of I.P.C. which had arisen out of previous enmity of two groups. It is individual incident and therefore public order cannot be said to have been affected thereby. He submitted that there was no material before the detaining authority to come to the conclusion that on account of the first incident public order was affected. So far as in-camera statements are concerned, the learned Counsel contended that they were belatedly recorded and therefore are of doubtful credibility.

11. It is true that the first incident pertains to the murder case. Assuming that there was no material before the detaining authority in connection with this incident to show that public order was disturbed, it is pertinent to note that along with this incident the detaining authority has also relied upon the two in-camera statements of witnesses 'A' and 'B' which indicate that the detenu has taken to the life of

crimes. He is a weapon wielding desperado and indulges in extortion. In the affidavit in reply the detaining authority has stated that from the incident narrated in C.R.No.300/2003 and from the in-camera statements of witnesses 'A' and 'B' it is clear that the detenu has created fear in the minds of the people in the said area. It is stated that C.R.No.300/2003 was not considered by him an isolation for issuing detention order against the detenu and that the in-camera statements reflect the tendency of the detenu to disturb the even tempo of the society. Witness 'A' has deposed about the incident which had taken place in the 3rd week of September 2003 when the detenu along with his associates had gone to the shop of the witness and abused him. When the witness questioned the detenu, the detenu got annoyed and started breaking counter glass and bottles standing on it and demanded Rs.2000/- for his liquor expenses. Since the witness knew that the detenu was a very dangerous person, he gave the detenu Rs.1000/-. But the detenu was not satisfied and again started breaking bottles. On hearing this commotion passers-by gathered in front of his shop. On seeing the people who had gathered there, the detenu rushed on them with a chopper. They ran away out of fear. The neighbouring shopkeepers shut down their shutters due to fear and panic that had prevailed in that area. Before leaving the detenu threatened the witness of dire consequences if per month hafta of Rs.2000/- was not paid to him.

12. Witness 'B' has deposed about the incident which had taken place in the 1st week of September 2003. While the witness was proceeding to his residence from his job, along the road to Parsi Wadi, suddenly the detenu and his associates intercepted him and the detenu prevented him from running away. The detenu caught hold of his collar and threatened him. The detenu's associate gave him fist blows and took out cash of Rs.1,500/- from the pocket of his shirt. Due to that the witness cried for help. When the passers-by gathered there, the detenu and his associates loudly threatened them due to which they ran away. On the basis of these statements the detaining authority has observed that people in the said localities and areas are experiencing a sense of insecurity and are living and carrying out their daily routine under a constant shadow of fear. We feel that the detaining authority was justified in reaching this conclusion. In our opinion, therefore the submission that the incidents in question do not affect public order cannot be upheld.

13. In this connection, we may refer to the Judgment of the Division Bench of this Court in Jafar Ahmed @ Jafar Fantoosh Mohamad Razzak Khan v. M.N.Singh and others 2002 CRI.L.J. page 1723. In that case also the detaining authority had issued order of detention on the basis of one murder case and two incamera statements. Similar contention was raised before the Division Bench. Referring to Section 5A of the

said Act, the Division Bench observed that the said Act provides that where a detention order is passed on more than one ground it would be deemed to be separately passed on each ground and mere fact that one of the grounds have been found to be invalid, would not mean that it cannot be sustained if the other grounds are valid and in accordance with law. Therefore, assuming that the first incident falls outside the purview of public order, the present order of detention can be sustained under section 5-A of the said Act on the basis of in-camera statements of 'A' and 'B' which clearly indicate that on account of the detenu's activities even tempo of society was affected.

14. Mr.Tripathi then urged that in C.R.No.300/2003, the report of the Chemical Analyser was awaited till 27-2-2004 when the detention order was passed. It pertained to nail clippings and blood samples of the detenu and his associates. Mr.Tripathi drew our attention to the averments made in the petition where a specific challenge is taken that the satisfaction of the detaining authority based only on samples without obtaining report of the Chemical Analyzer is not authentic. This submission is based on misconception about the law of preventive detention. The Chemical Analyzer's report is sought by the investigating agency. It would be relevant in the murder case pending against the detenu. That case will be decided in due course. The detaining authority is not supposed to scrutinize each piece of evidence to find

out whether the detenu would be ultimately convicted or not. The order of preventive detention is passed on the basis of reasonable prognosis of the future behaviour of the detenu based on his past conduct judged in the light of surrounding circumstances. The order of detention cannot be set aside on the ground that the detaining authority did not have before him the Chemical Analyzer's report. This submission is therefore rejected. No other submissions were made by Mr.Tripathi. In the circumstances, we find no substance in the petition. The petition is rejected.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)